

IN THE COURT OF APPEALS OF IOWA

No. 18-0676
Filed February 6, 2019

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID PERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Clay County, Charles K. Borth,
District Associate Judge.

Defendant appeals asserting the fee portion of his sentence was illegal.

CONVICTION AFFIRMED. SENTENCE VACATED IN PART AND REMANDED.

Jack Bjornstad of Jack Bjornstad Law Office, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, and Martha E. Trout, Assistant Attorney
General, for appellee.

Considered by Vogel, C.J., and Vaitheswaran and McDonald, JJ.

VOGEL, Chief Judge.

David Person appeals from his sentence imposed after being convicted of operating while intoxicated, first offense, under Iowa Code section 321J.2 (2017). He asserts his sentence was illegal because the district court ordered him to pay a \$150.00 probation fee while being supervised by the Clay County Sheriff. He claims there is no authority for a probation fee to be paid to a county sheriff, only to the judicial district department of correctional services if that is the probationary agency.

We review a challenge to an illegal sentence for errors at law. *State v Petrie*, 478 N.W.2d 620, 622 (Iowa 1991).

Although Iowa Code section 356.47 allows for Person to be placed “on probation, upon such terms and conditions as the sentencing judge may direct,” we find no provision in the code authorizing payment for a probationary fee to a county sheriff. However, such payment is authorized when a person is on probation with the judicial district department of correctional services. See Iowa Code § 907.8(2); *see also id.* § 905.14 (authorizing fees for probation and parole).

While assuming without deciding Person’s plea counsel was ineffective in allowing him to enter a plea that included this probation fee,¹ we affirm Person’s conviction, vacate the probation fee to the sheriff, and remand for the district court to correct the illegal sentence.

CONVICTION AFFIRMED. SENTENCE VACATED IN PART AND REMANDED.

¹ His plea agreement also included a hand written provision: “I reserve my right to contest the amount of restitution being sought.”